

FILED
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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SLOVAK BARON EMPEY MURPHY & PINKNEY, LLP

Thomas S. Slovak (CASB# 62815)

John O. Pinkney (CASB#162586)

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LB

Attorneys for Plaintiff John P. Anderson, individually
and in his official capacity as a Sheriff of Madera County

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 13 4825

JOHN P. ANDERSON, in his official capacity as the
Sheriff of Madera County, and individually,

Plaintiff,

v.

JACK DURAN, JR., in his purported official capacity
as Judge of the Picayune Rancheria of the Chukchansi
Indians Tribal Court;

DONNA HOWARD, in her purported official capacity
as Clerk of the Picayune Rancheria of the Chukchansi
Indians Tribal Court;

THE PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS, a federally recognized
Indian Tribe;

CHUKCHANSI ECONOMIC DEVELOPMENT
AUTHORITY, a wholly owned unincorporated entity
of the Picayune Rancheria of the Chukchansi Indians;
CHUKCHANSI INDIAN HOUSING AUTHORITY,
a wholly owned unincorporated entity of the Picayune
Rancheria of the Chukchansi Indians;

CASE NO.

[Action filed: _____]

Case Assigned to: Hon. _____

Dept: _____

**DECLARATION OF THOMAS S.
SLOVAK RE ADVANCE NOTICE O
GIVEN TO ALL PARTIES AN
COUNSEL RE EX PARTE
APPEARANCE AND APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE FOR PRELIMINARY
INJUNCTION**

Date:

Time:

Dept:

Slovak Baron Empey Murphy & Pinkney LLP
1800 East Tahquitz Canyon Way
Palm Springs, CA 92262

Slovak Baron Empey Murphy & Pinkney LLP
 1800 East Tahquitz Canyon Way
 Palm Springs, CA 92262

1 REGGIE LEWIS, in his purported official capacities)
 as chairman of the Picayune Rancheria of the)
 2 Chukchansi Indians; a representative of the)
 Chukchansi Economic Development Authority; and a)
 3 representative of the Chukchansi Indian Housing)
 Authority;)
 4 CHANCE ALBERTA, in his purported official)
 capacities as vice chairman of the Picayune Rancheria)
 5 of the Chukchansi Indians; a representative of the)
 6 Chukchansi Economic Development Authority; and a)
 7 representative of the Chukchansi Indian Housing)
 Authority;)
 8 CARL BUSHMAN, in his purported official capacities)
 as a council member of the Picayune Rancheria of the)
 9 Chukchansi Indians; a representative of the)
 10 Chukchansi Economic Development Authority; and a)
 11 representative of the Chukchansi Indian Housing)
 Authority;)
 12 IRENE WALTZ, in her purported official capacities as)
 a council member of the Picayune Rancheria of the)
 13 Chukchansi Indians; a representative of the)
 14 Chukchansi Economic Development Authority; and a)
 15 representative of the Chukchansi Indian Housing)
 Authority;)
 16 LYNN CHENOT, in her purported official capacities)
 as a council member of the Picayune Rancheria of the)
 17 Chukchansi Indians; a representative of the)
 18 Chukchansi Economic Development Authority; and a)
 19 representative of the Chukchansi Indian Housing)
 Authority;)
 20 DAVID CASTILLO, in his purported official)
 capacities as a council member of the Picayune)
 21 Rancheria of the Chukchansi Indians; a representative)
 of the Chukchansi Economic Development Authority;)
 22 and a representative of the Chukchansi Indian Housing)
 Authority; and)
 23 MELVIN ESPE, in his purported official capacities as)
 a council member of the Picayune Rancheria of the)
 24 Chukchansi Indians, a representative of the)
 25 Chukchansi Economic Development Authority; and a)
 26 representative of the Chukchansi Indian Housing)
 Authority.)

Defendants.)

1 I, Thomas S. Slovak declare:

2 1. I am an attorney licensed to practice before all courts of the State of California and
3 have been admitted to practice before this Court. I am a member of the law firm of Slovak, Baron
4 Empey Murphy & Pinkney, LLP, attorneys of record for Plaintiff, John P. Anderson, individually
5 and in his official capacity as Sheriff of Madera County. I have personal knowledge of the facts set
6 forth herein and if called upon I could and would testify competently thereto.

7 2. On Tuesday, October 15, 2013, shortly after 2:00 p.m., I determined that our office
8 would have all our pleadings completed in time to make an ex parte appearance in San Francisco
9 at 9:00 a.m. on Thursday, October 17, 2013 after I filed the pleadings and awaited assignment to a
10 particular judge. I also determined after talking to counsel appearing frequently in this Court, that
11 the appropriate method for filing the initial pleadings requesting a Temporary Restraining Order
12 ("TRO") was to personally appear and file them, given the uncertainties as to which Judge would
13 be assigned the matter and when possibly that judge might decide to hear the application for a
14 TRO.

15 3. I was aware there are various counsel involved in this case representing various
16 interests, who presumably would want to appear to contest the requested relief or otherwise make
17 their respective positions known to the Court. Because of the various locations of the many
18 counsel and to provide as much notice to them as possible, I called all known counsel involved
19 and gave them notice of my intended appearance in San Francisco at 9:00 a.m. on Thursday,
20 October 17, 2013; of my intention to stay until I could obtain a TRO; and, I told them that when
21 the pleadings were completed on Wednesday, October 16, 2013, that I would send to them via
22 email a copy of those pleadings. The specifics of that notice are:

23 A. I called the Rosette firm's Phoenix office, counsel representing what we refer to as
24 the Lewis Faction, who are the named individuals in the Complaint we are filing.
25 The Rosette firm in the name of The Picayune Rancheria of The Chukchansi Indians
26 ("Tribe"), the Chukchansi Economic Development Authority ("CEDA") and the
27 Chukchansi Indian Housing Authority ("CIHA") filed the lawsuit in the Tribal Court
28 before Defendant Jack Duran, Jr. Judge Presiding which is the litigation at issue

1 before this Court. I spoke with a representative in the Phoenix office of the Rosette
2 firm and asked to speak with lead counsel, David Osterfeld. I left the entire message
3 of my intentions and asked that he call me. I also called Attorney Hash in the
4 Fresno office of the Rosette Firm and spoke with Vonda Ricardi leaving her the
5 same message and asking Attorney Hash to call me. I was told by Ms. Ricardi that
6 Mr. Hash was in San Francisco and she would forward my message to him. Neither
7 Mr. Osterfeld nor Mr. Hash returned my call. However, at approximately 5:30 p.m. I
8 called Mr. Osterfeld on his cell phone and gave him notice personally. Mr. Osterfeld
9 stated that he would advise counsel in his firm of this matter and that he would not
10 personally be appearing but indicating to me someone else would.

- 11 B. I called Morris Peebles at his law office and spoke to him giving him notice of my
12 intended appearance and how I would be proceeding. I understand Mr. Peebles is
13 the attorney representing Morris Reid, the leader of one of the factions purporting to
14 be the actual, legitimate, authorized representatives of the Tribe, CEDA and CIHA.
15 His group is commonly referred to as the "Reid Faction."
- 16 C. I called Jonathan Miller and Caroline Frank of the Cota Cole firm, who I believe to
17 be representing is commonly referred to as the "Ayala Faction" meaning Nancy
18 Ayala and the other individuals who claim to be the actual, legitimate, authorized
19 representatives of the Tribe, CEDA and CIHA.
- 20 D. I called and spoke to David Rapport who I know represented CIHA as counsel as
21 presently constituted and which representatives, I understand, claim to be the actual,
22 legitimate, authorized representatives constituting a majority of the Board of CIHA.
23 Mr. Rapport was the counsel that represented CIHA in connection with the
24 agreement between CIHA and the County of Madera and the Sheriff that is at issue
25 in this case.
- 26 E. I understand that Les Marston is an attorney that represents Nancy Ayala and/or the
27 Ayala Faction in some fashion and/or the Tribe and possibly thereby CEDA. I do
28 not understand him to have ever represented CIHA. His telephone number is the

1 same as that of Mr. Rapport. I asked to speak with Mr. Marston, but was told he was
2 out of the office by Attorney Rapport. Mr. Rapport stated he would give my notice
3 to Mr. Marston.

4 4. After personally giving this notice to all counsel, I confirmed such notice via an
5 email to all counsel, a copy of which is attached hereto as "**Exhibit "A"**".

6 5. Upon reflection and to ensure that Defendants Duran and Howard received notice of
7 my intentions, I had sent to Ms. Howard an email a copy of which is attached hereto as **Exhibit**
8 "**B"**".

9 6. This morning I spoke to Attorney Jonathan Miller who advised me that Melanie
10 Daniel is in house counsel for the Tribe and CEDA and the Ayala Faction consisting of those
11 individuals claiming to be the authorized representatives and councilpersons for those entities and
12 specifically Nancy Ayala, Traci Brechbuehl, Karen Wynn, and Charles Sargosa. Mr. Miller stated
13 that he had given notice to Attorney Daniel and he believed that she would be appearing in San
14 Francisco at 9:00 a.m. Accordingly, it will be only to Attorney Daniel that we will now email
15 pleadings as with the other counsel identified herein.

16 7. I use the email address of my legal assistant, Sue Sartain, of sartain@sbemp.com on
17 all matters and pleadings.

18 8. Our office completed all of the pleadings and scanned them by 2:00 p.m. today,
19 October 16, 2013, and my office has electronically sent to all counsel those pleadings via email.
20 Necessarily those documents being of the size they are, had to be sent in multiple emails. As I am
21 leaving now to fly to San Francisco late this afternoon, I can represent that has occurred but I do
22 not have confirming copies to attach to this pleading, as it is being signed concurrent with the
23 delivery via email as represented. It is my belief that all counsel should receive these pleadings no
24 later than 4:00 p.m. today, October 16, 2013.

25 9. I have acted in good faith to give as much notice as possible of my intended ex parte
26 appearance to ensure all parties the opportunity to appear should they desire to do so and to allow
27 then this court to hear Plaintiff's ex parte application for the issuance of a Temporary Restraining
28 Order pending a hearing on Plaintiff's request for a Preliminary Injunction at its first opportunity

1 and hopefully on October 17, 2013, or at least by October 18, 2013. All counsel have been advised
2 of my intent to remain in San Francisco or wherever assigned (San Jose or Oakland) until the ex
3 parte application is ruled upon.

4 I hereby declare on under penalty of perjury that the foregoing is true and correct. Executed
5 this 16th day of October, 2013, at Palm Springs, California.

6 

7 THOMAS S. SLOVAK, ESQ.
8 1800 E. Tahquitz Canyon Way
9 Palm Springs, CA 92262
10 Tel: 760-322-2275
11 E-mail: sartain@sbemp.com

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Slovak Baron Empey Murphy & Pinkney LLP
1800 East Tahquitz Canyon Way
Palm Springs, CA 92262

EXHIBIT

A

Sue Sartain

From: Sue Sartain
Sent: Tuesday, October 15, 2013 6:19 PM
To: 'Dosterfeld@rosettela.com'; 'ghash@rosettela.com'; 'jpeebles@ndnlaw.com'; 'jmiller@cotalawfirm.com'; 'marston!@pacbell.net'; 'ccaforio@cotalawfirm.com'; 'drapport@pacbell.net'
Cc: Charles L. Gallagher; John O. Pinkney; seiver@sbemp.com
Subject: Anderson v. Duran, et al.
Attachments: image001.jpg; CAPTION _001.pdf

Dear Counsel:

This is to confirm that this afternoon I have left messages with each of you personally and/or your offices the following message and information:

1. Our office represents John P. Anderson, in his official capacity as the Sheriff of Madera County and individually.
2. At 9:00 a.m. on Thursday, October 17, 2013, or as soon thereafter as possible, I will be filing a Complaint for Declaratory and Injunctive Relief with accompanying pleadings seeking an immediate Temporary Restraining Order ("TRO") and Order to Show Cause why a Preliminary Injunction should not issue. The gravamen of the Complaint is that the Tribal Court presided over by Jack Duran, Jr. is without jurisdiction or authority to issue the TRO and Order to Show Cause re Preliminary Injunction issued by him on August 6, 2013, and that the pending proceedings and orders before Judge Duran should be ordered terminated and any orders against Sheriff Anderson be vacated.
3. The pleadings that our office will file at 9:00 a.m. on Thursday will be emailed to each of you tomorrow, as counsel for various entities and parties. This will be done as soon as they are complete, signed and are scanned for transmission.
4. We have been advised, by experienced counsel long practicing before the US District Court, Northern District of California, that it is uncertain what may occur when we file our pleadings Thursday morning. We are informed that a Judge or Magistrate may be assigned who is sitting in San Francisco or it is possible the matter may be assigned to a jurist sitting in Oakland or San Jose. Also, we are advised that it is uncertain whether a Judge will hear or will not hear our request for a TRO on Thursday or the next day, or possibly next week. Accordingly, we are prepared to stay at the Courthouse in San Francisco or wherever assigned until we obtain a ruling on our ex parte request.
5. We invite all to attend, but have advised everyone that regardless of your appearance, having given notice as we have, we will seek immediate relief from the Court pending a hearing on our request for a preliminary injunction.

Attached hereto is a copy of the face sheet of the Complaint for Declaratory Relief that we intend to file on Thursday. It is our understanding that each of you and your firms purport to represent the Tribe and/or CEDA and/or CIHA and groups claiming to be the only authorized and lawful Tribal Council for the these entities. Accordingly, on behalf of your respective clients we respectfully request that each of you accept service of the Complaint and pleadings you will receive tomorrow on behalf of your clients, whoever they are and in whatever capacity you claim to represent them.

We presume the Rosette firm will be representing Mr. Duran and Ms. Howard, as well as the individuals named in the caption of the Complaint. If that is not true, then please advise us who will be representing them and forward to that

counsel tomorrow the pleadings that we will be sending you. The same request is made to any counsel who is receiving this email as we have given notice to all counsel we understand represent the various parties and various tribal factions involved including counsel for Mr. Lewis and his group; Ms. Ayala and her group; and Mr. Reid and his group.

In conclusion, please be advised that I use the email address of sartain@sbemp.com. My legal assistant's name is Sue Sartain. The attorneys in this office who will be primarily assisting me in this litigation are John Pinkney and Charles Gallagher. The paralegal on this matter is Joseph Seiver. I would appreciate it if everyone when communicating with me would copy Messers. Pinkney, Gallagher and Seiver.

I look forward to having everyone appear at 9:00 a.m. in San Francisco on Thursday and being prepared to argue that day, or as soon thereafter as the matter may be heard, whether the requested TRO should be issued as requested by our office on behalf of Sheriff Anderson.

Thomas S. Slovak, Esq.



PALM SPRINGS ORANGE COUNTY PRINCETON

SLOVAK BARON EMPEY MURPHY & PINKNEY LLP
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To ensure compliance with requirements imposed by the United States Treasury Department, you are hereby informed that any advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent.

EXHIBIT

B

Sue Sartain

From: Sue Sartain
Sent: Tuesday, October 15, 2013 6:57 PM
To: dhoward@Chukchansitribe.net
Cc: dosterfeld@rosettela.com
Subject: The Picayune Rancheria of the Chukchansi Indians, et al v. Ayala et al. Case No. 2013-00007
Attachments: image001.jpg; CAPTION _001.pdf

Ms. Howard:

Given that we are uncertain as to what law firm, if any, represents you and Mr. Duran, we are providing you with notice that our firm will be seeking a TRO and OSC re Preliminary Injunction against you and Mr. Duran in the action pending against Sheriff Anderson. Our research suggests that both Mr. Duran (as Judge) and you (as Court Clerk) must be named Defendants in our Federal action seeking declaratory and injunctive relief. Accordingly, both you and Mr. Duran have been named as Defendants in our Federal Court action which we anticipate filing this Thursday. We will provide you with a copy of the pleadings as soon as they are ready for filing. If you and Mr. Duran are represented by legal counsel, please let us know and future notices will be provided to your legal counsel. Also please see the attached email below from Attorney Thomas Slovak of our firm that was sent out this evening regarding Federal Court Ex Parte hearing.

Sue Sartain, Secretary to
Thomas S. Slovak, Esq.



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Cc: Charles L. Gallagher; John O. Pinkney; seiver@sbemp.com

Subject: Anderson v. Duran, et al.

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Thomas S. Slovak, Esq.



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Tracking: